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Cerrid # 32564000**BRIEFING NOTE FOR THE MINISTER OF NATIONAL DEFENCE**

**Response to the CSE Commissioner's
Spring 2016 "Spot check" Review of CSE Use and Retention of Foreign Signals
Intelligence One-end Canadian Communications**

(For Action)

Summary

- You received a letter from the CSE Commissioner, dated 5 December 2016, providing the results of his latest *Spot Check Review of CSE Use and Retention of Foreign Signals Intelligence One-end Canadian Communications*.
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Background

- The CSE Commissioner conducted this review to verify the effectiveness of CSE's procedures regarding the use, retention and deletion of recognized SIGINT one-end Canadian communications acquired by CSE, including those from its Second Party partners. Those procedures demonstrate CSE's compliance with legal requirements to only retain and use one-end Canadian communications that are essential to international affairs, defence or security.
- While previous spot check reviews have focused only on recognized Private Communications (PCs) incidentally acquired by CSE in its activities under Ministerial Authorization (MA),

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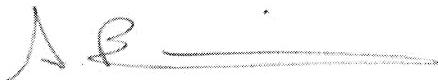
- The Commissioner's office examined records related to SIGINT communication events collected by CSE and its Second Party partners that were recognized by CSE analysts during the period of 1 March 2016 to 31 May 2016. This included communications used in reports, retained for future use, as well as those deemed to have no Foreign Intelligence (FI) value. intelligence reports were produced based on one-end Canadian communications during the review period.

Considerations

- The CSE Commissioner was satisfied that:
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Next Steps

- I have enclosed, for your consideration, a draft letter of response to the CSE Commissioner.



Greta Bossenmaier
Chief



Communications Security
Establishment Commissioner

The Honourable Jean - Pierre Plouffe, C.D.

Commissaire du Centre de la
sécurité des télécommunications

L'honorable Jean - Pierre Plouffe, C.D.

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Our file # 2200-107

December 5, 2016

The Honourable Harjit S. Sajjan, PC, OMM, MSM, CD, MP
Minister of National Defence
101 Colonel By Drive
Ottawa, ON K1A 0K2

**Subject: Review of CSE Use and Retention of Foreign Signals Intelligence
One-end Canadian Communications**

Dear Minister:

The purpose of this letter is to provide you with the results of a spot check review of recognized one-end Canadian communications related to foreign signals intelligence (SIGINT) collection that the Communications Security Establishment (CSE) used, retained or deleted during the period of March 1, 2016, to May 31, 2016. One-end Canadian communications are those where one of the communicants is either physically located in Canada — that is, a private communication (PC) — or where one communicant is a Canadian physically located outside Canada. To verify that CSE does not target Canadians and effectively applies satisfactory measures to protect Canadians' privacy, I examined a sample of one-end Canadian communications acquired by CSE, including from its second party partners in the United States, the United Kingdom, Australia and New Zealand.

The review was conducted under the Commissioner's general authority set out in paragraph 273.63(2)(a) of the *National Defence Act* (NDA) and the authority set out in subsection 273.65(8) of the NDA to determine whether activities carried out under a ministerial authorization (MA) are authorized by the Minister of National Defence. CSE had no warning that the office was about to conduct the spot check.

Subsection 273.65(1) of the NDA permits the Minister to authorize CSE in writing — for the sole purpose of obtaining foreign intelligence (FI) and only after the Minister is satisfied that specific conditions set out in subsection 273.65(2) of the NDA have been met — to intercept PCs in relation to an activity or class of activities specified in an MA. The MAs set out the formal framework for dealing with PCs that have been intercepted unintentionally through SIGINT activities and shield CSE from the prohibition respecting the interception of PCs found in Part VI of the *Criminal Code*. Currently, CSE conducts three distinct SIGINT collection activities or classes of activities under MAs: (1) collection activities; (2) collection activities; and (3) collection activities.

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To support the Minister in his accountability and control of CSE, the MAs require CSE to report to the Minister — after the MAs expire (no MA may be in effect for longer than one year) — information relating to the privacy of Canadians, including the number of recognized PCs unintentionally intercepted pursuant to the MAs that are used or retained on the basis that they are essential to international affairs, defence or security.

If a CSE analyst whose function is directly related to the production of FI reports recognizes that an intercepted communication is one-end Canadian — whether the communication is acquired by CSE or collected by a Second Party — then the analyst must, upon recognition, annotate the communication (that is, indicate

that the communication is one-end Canadian and whether it is to be retained, due to its FI value, or deleted).

One-end Canadian communications used in FI reports are retained by CSE. One-end Canadian communications (and communications containing information about Canadians) that are not essential to international affairs, defence or security must be annotated for deletion and are automatically removed from the repository

If a one-end Canadian communication is deemed essential by an analyst and it is annotated for retention but not used in an FI report within the repository automatically annotates it for deletion. At that time, the analyst who had originally marked the communication as essential is prompted by the system to re-assess whether it remains essential, and, if so, to re-annotate it for retention. (Note that

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Based on the information reviewed and the interviews conducted.

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Over the years, CSE has enhanced its operational and administrative processes and technical systems relating to one-end Canadian communications,

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Before this letter was finalized, CSE officials had an opportunity to review it for factual accuracy and to comment on the findings.

If you have any questions or comments, I will be pleased to discuss them with you at your convenience.

Yours sincerely,



Jean-Pierre Plouffe

cc: Ms. Greta Bossemeyer, Chief, CSE

Minister
of National Defence



Ministre
de la Défense nationale

Ottawa, Canada K1A 0K2

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CERRID # 32564165

The Honourable Jean-Pierre Plouffe
Communications Security Establishment Commissioner
90 Sparks Street, Suite 730
P.O. Box 1984, Station B
Ottawa, Ontario
K1P 5B4

Dear Commissioner Plouffe:

I am writing to respond to your letter dated 5 December 2016, related to your *Spot Check Review of CSE Use and Retention of Foreign Signals Intelligence One-end Canadian Communications.*

I look forward to receiving future reports resulting from your continued commitment to conduct reviews on CSE use and retention of one-end Canadian communications.

Sincerely,

The Hon. Harjit S. Sajjan, PC, OMM, MSM, CD, MP

cc: Greta Bossenmaier, Chief, CSE

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